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Supreme Court, U.S.
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In The
Supreme Court of the United States

QEMAL METO AND ADRIANA METO,
Petitioners,

v.

ALBERTO GONZALES, ATTORNEY GENERAL,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI
with Appendix

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Immigration Judge acted contrary to the statute and deprived Petitioners of due process by holding them to an inappropriately high standard for evaluating their credibility where their asylum claim was corroborated by testimony and documentary evidence.

2. Whether Petitioners satisfied their burden of establishing that they suffered past persecution under 8 C.F.R. § 1208.13(b)(1)(i) and are refugees under section 101(a)(42)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1101(a)(42)(A), and implementing regulations, where they presented credible evidence that they were the victims of multiple arrests, beatings, and threats to their lives.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Qemal Meto and Adriana Meto respectfully pray that a writ of certiorari issue to review the opinion and order of the United States Court of Appeals for the Sixth Circuit entered in this case on August 21, 2006 and December 27, 2006, respectively.

OPINIONS BELOW

The opinion of the Immigration Judge (App. D1 hereto) is unreported. The opinion of the Board of Immigration Appeals (App. C1) is unreported. The opinion of the Sixth Circuit Court of Appeals on the merits (App. B1), of which review is sought, is unreported. The order of the Sixth Circuit denying the petition for panel rehearing and suggestion for rehearing en banc in such case (App. A1) is unreported.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit (App. B1) was entered on August 21, 2006. The court denied Petitioners' timely petition for rehearing on December 27, 2006 (App. A1). The jurisdiction of the Supreme Court is invoked under Supreme Court Rule 10(a), in that the Sixth Circuit has entered a decision in conflict with decisions of other United States courts of appeal on the same important matter and

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has sanctioned a decision of the Board of Immigration Appeals that has so far departed from the accepted and usual course of proceedings, as to call for an exercise of this Court's supervisory power.

RELEVANT PROVISIONS INVOLVED

8 U.S.C. § 1101(a)(42) provides in relevant part:

> The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1158(a)(1) provides:

> Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port

> of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

STATEMENT

(i) Nature of the Case

This is a petition for review of the decisions of the Board of Immigration Appeals ("BIA") and the Sixth Circuit Court of Appeals denying an asylum application based on minor inconsistencies where the application was supported by consistent testimony and corroborating evidence.

(ii) Proceedings at the Immigration Court

Petitioners Qemal Meto ("Mr. Meto") and Adriana Meto ("Mrs. Meto"), husband and wife, are citizens of Albania. They entered the United States on October 29, 2000. Mr. Meto filed a timely asylum application on July 17, 2001 and named Mrs. Meto as a derivative beneficiary. The Immigration and Naturalization Service ("INS")[1]

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[1] The Homeland Security Act abolished the INS effective March 1, 2003 and transferred its functions to various

referred Mr. Meto's asylum application to the Immigration Court. The INS issued Notices to Appear ("NTA") alleging that they were inadmissible at the time of entry, in violation of INA § 237(a)(1)(A), 8 U.S.C. § 1227(a)(1)(A).

In proceedings conducted in Detroit, Michigan, the Petitioners admitted that all of the allegations contained in the NTAs were true, conceded removability, and applied for asylum and withholding of removal.

Following an October 1, 2003 merits hearing, the Immigration Judge ("IJ") denied their applications and ordered them removed. The IJ issued a mixed credibility finding in which he believed only portions of the asylum claim. The IJ also concluded that Mr. Meto did not suffer past persecution or have a well-founded fear of future persecution. App. D1.

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agencies within the Department of Homeland Security. Pub. L. No. 107-296, 116 Stat. 2135, 2192. The BIA and the Immigration Court remain part of the Department of Justice. This brief refers to the INS with respect to actions it took during its existence and to the appropriate agencies for events occurring after March 1, 2003.

(iii) Proceedings at the Board of Immigration Appeals

Petitioners timely appealed to the BIA. On January 11, 2005, the BIA affirmed without opinion the IJ's decision. App. C1. Petitioners timely petitioned for review to the Sixth Circuit Court of Appeals.

(iv) Statement of Facts

When the Communist Party was in power in Albania, the Albanian government confiscated the property owned by Mr. Meto's parents. The government imprisoned his father for three years. Mr. Meto became active in Albanian politics in 1990 and 1991 as the pro-democracy movement took flight. In July 1991, he was detained and beaten and pressured to leave the Democratic Party after taking part in an anti-communist demonstration. In 1997, he became the leader of his local Democratic Party zone. On July 3, 1997, the police detained and beat him. Three days after overseeing the July 1997 elections, three masked men beat him unconscious and left him in the street. In October 2000, after another election, he was arrested and then, later, an explosion occurred outside his home. He feared that his daughter, Gerta, would be kidnapped and sold into prostitution.

(v) Statement of Court of Appeals and Supreme Court Jurisdiction

Jurisdiction in the Sixth Circuit Court of Appeals was proper. 8 U.S.C. § 1252(a)(2)(B). Venue was proper in the Sixth Circuit because an IJ sitting in Detroit, Michigan completed the Immigration Court proceedings. 8 U.S.C. § 1252(b)(2).

Petitioner invokes the jurisdiction of this Court on application for writ of certiorari under Supreme Court Rule 10(a), in that the Sixth Circuit has entered a decision in conflict with decisions of other United States courts of appeal on the same important matter and has sanctioned a decision of the BIA that has so far departed from the accepted and usual course of proceedings, as to call for an exercise of this Court's supervisory power.

REASONS FOR GRANTING THE WRIT

I. The Sixth Court Held Petitioners to an Inappropriately High Credibility Standard

The testimony and evidence "compel" the conclusion that Mr. Meto testified credibly. Ouda v. INS, 324 F.3d 445, 451 (6th Cir. 2003). The IJ's explanations do not survive close scrutiny. Mr. Meto testified consistently with his asylum application and witnesses yet the IJ did not believe his claim. (R. 39, Oral Decision; JA 31).

The federal courts do "not accept blindly an IJ's conclusion that a petitioner is not credible." Liti v. Gonzales, 411 F.3d 631, 637 (2005) (internal citations omitted). The IJ must base his credibility determination on more than speculation, conjecture, or irrelevant inconsistencies, including "minor inconsistencies which are easily resolved by other facts in evidence. See Sylla v. INS, 388 F.3d 924, 926 (6th Cir. 2004). The IJ must offer detailed, specific, and cogent reasons for any stated disbelief. Liti, 411 F.3d at 637; Secaida-Rosales v. INS, 331 F.3d 297, 307 (2d Cir. 2003). An alien's lack of credibility cannot form the basis for the denial of his application where independent, objective evidence supports a grant of asylum. Camara v. Ashcroft, 378 F.3d 361 (4th Cir. 2004).

The IJ believed that Mr. Meto was arrested and beaten in 1991 and was beaten in 1997 but did not believe the remainder of Mr. Meto's claim. When measured against Mr. Meto's years of suffering, the minor inconsistencies in the dates and details are "insubstantial and (do) not go to the heart of" his claim. See Liti, 411 F.3d at 638. Any conflict is "more apparent than real." Mece v. Gonzales, 415 F.3d 562, 575 (6th Cir. 2005). The important question is whether the events alleged actually occurred, not whether an alien made inconsistent statements. Pergega v. Gonzales, 417 F.3d 623, 629 (6th Cir. 2005) ("Whether Pergega *reported* the kidnapping and beating to the police is less relevant than the fact that he was *actually* kidnapped and beaten.").

The IJ's adverse credibility finding lacks any support in the record. He mischaracterized and ignored the consistent statements and testimony. Ahmed v. Gonzales, 398 F.3d 722, 726-28 (6th Cir. 2005). The IJ did not realize that Mr. Meto was discussing two distinct events from 1997. He was detained on July 3, 1997. A.R. 96. The first incident occurred on July 3, 1997 when the police detained and beat him. Later, three masked men attacked him shortly after the July 29, 1997 elections. Mr. Meto's

daughter confirmed that her father was attacked in July 1997.

The IJ erroneously focused on omissions from Mr. Meto's written application. Omissions from an asylum application does not automatically result in an adverse credibility finding because the "circumstances surrounding the application process do not often lend themselves to a perfectly complete and comprehensive recitation of an applicant's claim to asylum." Secaida-Rosales, 331 F.3d at 308; see also Liti, 411 F.3d at 637-38; Vasha v. Gonzales, 410 F.3d 863, 871 n.4 (6th Cir. 2005). The purpose of the removal hearing "is not simply to reiterate the statements made in the asylum application, but rather to allow an alien 'to present evidence on the alien's own behalf' including to elaborate on the generalized claims made in the application itself." Liti, 411 F.3d at 639. It is "unfair" and "unrealistic" to require applicants to list every incident and detail in their asylum applications. Secaida-Rosales, 331 F.3d at 308. The "small space on the [asylum] form would hardly indicate to the applicant that the failure to include every detail regarding the basis for asylum could later lead to an adverse credibility finding when the applicant elaborates on them in the course of a deportation hearing." Id.

To the extent that it was possible for her to do so, Mr. Meto's daughter corroborated Mr. Meto's testimony concerning the explosion outside their home in October 2000 and Mr. Meto's arrest that same month. Mr. Meto's failure to mention these incidents in his written application does not detract from his credibility because his claim was corroborated by his daughter and written evidence.

The panel opinion and the IJ did not explain or justify many of the reasons given in finding that Mr. Meto was not credible. The few explanations offered by the IJ do not support an adverse credibility finding. The IJ misunderstood and mischaracterized the evidence, speculated as to the reason for the perceived discrepancies, and relied on minor or immaterial inconsistencies about events that were not central to Mr. Meto's asylum claim.

II. Petitioners Established Their Eligibility for Asylum

Mr. Meto submitted credible evidence that he suffered past persecution. The Panel Decision erred in concluding that the harm did not rise to the level of persecution simply because it occurred more than 15 years ago. The relevant inquiry is the severity of the harm and whether it was on account of a protected ground. The recency of the harm is only relevant to whether an asylum

applicant continues to possess a well-founded fear of persecution.

An alien can have a well-founded fear of an event happening where there is as little as a one-in-ten chance of it taking place. INS v. Cardoza-Fonseca, 107 S. Ct. 1207, 1217, 480 U.S. 421, 94 L. Ed. 2d 434 (1987). The alien must subjectively "fear that he will be persecuted upon return to his country, and he must present evidence establishing an objective situation under which his fear can be deemed reasonable." Mikhailevitch v. INS, 146 F.3d 384, 389 (6th Cir. 1998). An alien who satisfies his burden of establishing past persecution is presumed to have a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1)(i).

The communist government in Albania took the land owned by Mr. Meto's parents and imprisoned his father for three years. Not unsurprisingly, Mr. Meto joined the anti-communist and pro-democracy movement in 1990 and 1991. Because of his political activities and beliefs, he was detained and beaten in July 1991 and pressured to leave the Democratic Party. After becoming the leader of his local Democratic Party zone in 1997, he was detained and beaten on July 3, 1997 and then assaulted after the July elections. In October 2000, after another election, he was arrested and then, later, an explosion occurred outside his

home. He also feared that his daughter would be kidnapped and sold into prostitution.

The IJ believed that Mr. Meto was arrested and beaten in 1991 and was beaten in 1997. This, in combination with the harm suffered by Mr. Meto's family, is severe enough to constitute past persecution.

The fact that these events occurred many years ago does not lessen the severity but is relevant to whether Mr. Meto continues to possess a well-founded fear of persecution. Even if this presumption is rebutted by changed country conditions, Mr. and Mrs. Meto nevertheless remain eligible for humanitarian asylum if "there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country." 8 C.F.R. § 1208.13(b)(1)(iii)(B). This regulation codifies the rule announced in Matter of Chen, 20 I. & N. Dec. 16, 21 (BIA 1989) and implements the United States' obligations under international refugee law. "Other serious harm" is "harm that is not inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion, but is so serious that it equals the severity of persecution." 65 Fed. Reg. 76121, 76127 (2000); Krastev v. INS, 292 F.3d 1268, 1271 (10th Cir. 2002).

The decisions below are incompatible with other recent decisions finding that Albanian asylum applicants continue to demonstrate the eligibility for asylum. See Gilaj v. Gonzales, 408 F.3d 275, 285-86 (6th Cir. 2005); see also Gjerazi v. Gonzales, 435F.3d 800, 810-13 (7th Cir. 2006); Shtaro v. Gonzales, 435 F.3d 711, 716-17 (7th Cir. 2006); Caushi v. Attorney General, 436 F.3d 220, 227 (3d Cir. 2006); Halo v. Gonzales, 419 F.3d 15, 19 (1st Cir. 2005); Voci v. Gonzales, 409 F.3d 607, 614-16 (3d Cir. 2005).

The Sixth Circuit should have remanded the proceedings to the BIA to allow it to determine, in the first instance, if the Petitioners no longer possess a well-founded fear of persecution, and if so, whether they are entitled to humanitarian asylum. INS v. Ventura, 537 U.S. 12, 123 S. Ct. 353, 154 L. Ed. 2d 254 (2002).

CONCLUSION

Petitioner respectfully submits that the Sixth Circuit erred in the following respects:

- The court held Petitioners to an inappropriately high credibility standard where they presented the corroborating testimony and evidence that was reasonably available to them.
- The Sixth Circuit applied the wrong legal standard in considering whether Petitioners suffered past persecution.

Therefore, Petitioners respectfully pray that the Court grant their petition for writ of certiorari and reverse the decisions of the Sixth Circuit Court of Appeals and the BIA.

Respectfully Submitted,

Marshal E. Hyman

Counsel of Record

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APPENDIX

6TH CIRCUIT:

Order Denying Petition for Rehearing,
filed 12/27/06 ..... A1 - A2

Opinion,
filed 08/21/06 ..... B1 - B19

BOARD OF IMMIGRATION APPEALS:

Decision of the Board of
Immigration Appeals,
filed 01/11/05 ..... C1 - C2

Oral Decision and Order
Immigration Judge,
filed 10/01/03 ..... D1 - D35

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER, DENYING PETITION FOR REHEARING
AND PETITION FOR REHEARING EN BANC,
FILED DECEMBER 7, 2006

A-1 through A-2

No. 05-3108

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

QEMAL METO, ET AL.,	)	
	)	
Petitioners,	)	
	)	
v.	)	ORDER
	)	
ALBERTO R. GONZALES, ATTORNEY GENERAL	)	
	)	
Respondent.	)	

BEFORE:BOGGS; Chief Jude; COLE, Circuit Judge; and WISEMAN,* District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc,

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*Hon. Thomas A. Wiseman, Jr., Senior United States District Judge for the Middle District of Tennessee, sitting by designations.

the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

OPINION,
FILED AUGUST 21, 2006

B-1 through B-19

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
File Name: 06a0601n.06
Filed: August 21, 2006

No. 05-3108

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

QEMAL METO; ADRIANA METO,
Petitioners,

v.

ALBERTO R. GONZALES, Attorney General,
Respondent.

ON APPEAL FROM THE BOARD OF IMMIGRATION APPEALS

OPINION

BEFORE: BOGGS, Chief Judge; COLE, Circuit Judges; WISEMAN, District Judge.* R. GUY COLE, JR., Circuit Judge.

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*The Honorable Thomas A. Wiseman, Jr., Senior United States District Judge for the Middle District of Tennessee.

Petitioners-Appellants Qemal Meto and Adriana Meto, citizens of Albania, appeal the immigration judge's decision denying them asylum, withholding of removal, and relief under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") pursuant to 8 C.F.R. § 208.16(c). The Metos argue that the immigration judge erred by failing to make an explicit credibility determination, by requiring an unreasonable amount of corroboration, and by improperly analyzing their claims of past and future persecution. The Metos further argue that the Board of Immigration Appeals ("BIA") erred in evaluating their application under its streamlined procedures. For the following reasons, we AFFIRM the decision of the immigration judge, as adopted by the BIA.

I.

Qemal and Adriana Meto, both citizens of Albania, entered the United States without proper documentation on October 29,2000. The Immigration and Naturalization Service (INS) commenced removal proceedings against them. The Metos applied for asylum, withholding of removal, and relief

under the CAT. A hearing was held before an immigration judge (IJ) in Detroit, Michigan, on October 1, 2003.

Qemal Meto testified that he was born in Cortia, Albania, on May 15, 1943, where he remained until he fled in 2000. Qemal's father was a merchant in Erseke, located in the district of Kolonja. Qemal testified that in 1946, his father's goods, land, and home were confiscated by the Albanian government, which accused his father of participating in "education propaganda" and undermining the new government. Qemal testified that his father was imprisoned for three years, and was released in 1949. He further testified that his uncles and some of his cousins were imprisoned during this time, and that one of his uncles was "eliminated."

Qemal worked in Cortia as a shoemaker from 1959 until 1994. From 1995 until he left Albania in 2000, Qemal was a shoemaker for "private associations." Qemal testified that he became involved in politics after the introduction of democracy in Albania. Qemal testified that, beginning in 1990, he participated in meetings and joined delegations in the villages to discuss democracy. He claimed to be motivated by his personal hatred for the Socialist regime because it had confiscated his family's property. Qemal testified that because

of his political activity, he was arrested one afternoon and taken to the police station in July of 1991. Of the police, Qemal testified that:

> [W]hoever is Albanian knows that once they get you in their hands, in the police station, all they want to do is beat you up .... They mistreated, mistreated me and they also used psychological pressure on me, trying to tell me - telling me what are you trying to do getting involved in the democratic party, what are you getting out of this, and the fact of the matter was that I was a simple person and I did not get involved into higher standards.

Qemal also stated that he "got beat up by the police," that he was held for twelve hours, and that he was released the next morning.

The Democratic Party gained control in 1992. Qemal testified that after his arrest in 1991, his "hate became even stronger," and he became fully involved in and a member of the Democratic Party in 1993. In 1997, Qemal became a section leader, which required him to follow instructions from the leaders in Kolonja, such as arranging a counter-meeting whenever a Socialist meeting was being held. Qemal was also given the responsibility of handling political outreach issues in areas with a strong Socialist base. Finally, Qemal was made

the election commissioner in Cortia, and was responsible for maintaining the peace at its election center. He testified that the armories were broken into, and that everyone had weapons, which they continued to possess as of the time Qemal left Albania in 2000. Qemal testified that during the July 1997 election, there were some minor disturbances at the election center in the form of arguments, which required police intervention. The Socialist Party won the 1997 election.

Qemal testified that a couple of days after the election, three people with masks came to Qemal's street, where they attacked him. Qemal testified that as they hit him, the attackers said "this is the one from the democratic party, and he is courageous, we [sic] going to show him now." Qemal testified that he lost consciousness on the street, and that he received unspecified fractures, as well as a black eye and a broken tooth, for which he was treated at home. Qemal did not change his level of involvement in the Democratic Party after the attack, even though he was insulted "[e]very time [he and his wife] went out." Qemal testified that people harassed his daughter Gerta because of her involvement with the Democratic Party. After Gerta declined invitations to join

the Socialist Party, Qemal escorted her to school out of fear that she would be kidnapped and forced into prostitution in Greece or Italy, which he testified often happened to women in Cortia. Qemal testified that there was a thwarted attempt to kidnap Gerta, but did not testify as to the details of that attempt. Gerta legally entered the United States in August of 1999 to attend college.

Qemal testified that the political parties grew active in anticipation of an election to be held in October of 2000. Qemal testified that he was approached to help the Socialist Party win the election. The record is silent as to who approached him. Qemal refused. He testified that because of his refusal, two policemen took him to the police station, where they kicked and beat him with sticks, and detained him for twenty-four hours in a "humid and wet cell." He testified that the police told him that if he "d[id] any other things," he would be killed. Qemal testified that the Democratic Party lost that election because the votes were manipulated, although he does not specify by whom.

Qemal testified that an explosive was thrown at his home around midnight on October 8, 2000, the same day that he was detained by the police, and that the explosive cracked

both the walls and windows. Qemal testified that the stone fence surrounding his home had to be demolished because of damage from the explosion. Qemal offered into evidence a picture of the damage taken by his nephew. After the explosion, Qemal and Adriana went to the city of Tirana to live with a cousin, but returned to their home occasionally in the middle of the night. Qemal and Adriana left Albania on October 28, 2000, after paying an unknown person to prepare papers and passports.

Qemal testified that ifhe returned to Albania, his life would be in danger. He testified that he knew that the explosive device and attempted kidnapping of his daughter were related to his political beliefs because there was no other basis for such attacks. Qemal also testified that the Albanian government generally does not take efforts to prevent or punish criminal activity.

Gerta Meto testified that while living in Cortia, she was involved in a musical group that performed on the radio. She testified that employees of the radio station asked Qemal to refrain from his involvement with the Democratic Party, or else Gerta would not be able to continue to perform. She also testified that her family received various letters, which

threatened the murder or kidnapping of Gerta if Qemal did not resign from the Democratic Party. She testified that because of the threats, she was unable to travel to school by herself or leave the house at night. When asked by the Metos' attorney ifthere were any attempts to kidnap her or any "close calls," Gerta testified in the negative. She testified that her father had been arrested and held overnight twice, once in 1991 and again in 1997. Adriana did not testify at the hearing.

The record also contains a written certification that Qemal is a member of the Cortia branch of the "Ex-Political Persecuted Persons Association," and a "family certificate" issued by Albania, which attests that Qemal, Adriana, and Gerta are members of the same family. Additionally, the record contains a certificate verifying Qemal's membership in the Democratic Party, signed by Alfred Olli, the party's chairman.

The IJ found that Qemal was arrested in 1991 and did suffer some harm, but that the harm was "minuscule," because Qemal failed to describe it in his application and equivocated about whether he had been beaten on that occasion. The IJ found that Qemal had been beaten in 1997, but also concluded that Qemal had not demonstrated that he

had been arrested, partly because he failed to record that arrest in his asylum application. The IJ determined that even if the 1997 beating had been administered for political reasons, it did not rise to the level of past persecution. The IJ found that there was no attempt to kidnap Gerta, and that because Qemallied about it other aspects of his testimony were rendered less credible.

The IJ declined to find that Qemal had been arrested in 2000, because no other testimony corroborated Qemal's account, and because the IJ determined that Qemal had lied about the attempted kidnapping. The IJ similarly declined to find that a bomb had detonated outside the Metos' house, because although there was evidence that the home had been damaged, neither Adriana nor Gerta testified to the existence of a bomb or explosion.

Finally, the IJ concluded that Qemal' s testimony had not been sufficiently corroborated. The IJ found that the Metos had not demonstrated that they suffered past persecution, and thus were not entitled to a rebuttable presumption of future persecution; and that even if the IJ credited Qemal's testimony, Qemal did not testify to events amounting to past persecution. Furthermore, the IJ found that

the State Department Country Report for Albania indicated that the anarchy that once existed in Albania had abated, and that members of the Democratic Party were no longer subj ect to violence and persecution. The IJ did not specifically address the Metos' claim for relief under the CAT.

The IJ denied the Metos' application for asylum, withholding of removal, and relief under the CAT. The BIA adopted the IJ's decision in a per curiam order signed by a single BIA member. This appeal follows.

II.

A. Standard of Review and Burden of Proof

The Attorney General has discretion under the Act to grant asylum to a "refugee." Immigration and Naturalization Act (INA) § 208(b), 8 US.C. § 1158(b). A refugee is a person who is unable or unwilling to return to his home country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 US.C. § 11 01 (a)(42)(A). "Disposition of an application for asylum requires a two-step inquiry: first, whether the petitioner is a 'refugee' within the meaning of the statute, and second, whether the petitioner merits a favorable exercise of discretion by the

Attorney General." *Perkovic v. I.N.S*, 33 F.3d 615,620 (6th Cir. 1994)(citing *I.N.S. v. Cardoza-Fonseca*, 480 US. 421, 428 n.5 (1987)). The petitioner bears the burden of proof at both stages. Pilica v. Ashcroft, 388 F.3d 941,950 (6th Cir. 2004) (citing Klawitter v. INS, 970 F.2d 149, 151 (6th Cir. 1992)).

In order to qualify as a refugee, the Metos must establish either that they have suffered actual past persecution or that they have a well-founded fear of future persecution. *Pilica*, 388 F. 3d at 950 (citation omitted); 8 C.F.R. § 208.13(b). Under 8 US.C. § 11 01 (a)(42)(A), past persecution "requires more than a few isolated incidents of verbal harassment or intimidation, unaccompanied by any physical punishment, infliction of harm, or significant deprivation of liberty ." *Mikhailevitch v. I.N.S.*, 146 F.3d 384, 390 (6th Cir. 1998). If the Metos establish past persecution, they are presumed to have a well-founded fear of future persecution. Id. at 389; 8 C.F.R. § 208. 13(b)(1).

Even if they cannot demonstrate past persecution, the Metos may be eligible for asylum if they independently demonstrate that they have a well-founded fear of future persecution. "An alien may establish a well-founded fear of

future persecution by demonstrating: (1) that he has a fear of persecution in his home country on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) that there is a reasonable possibility of suffering such persecution if he were to return to that country; and (3) that he is unable or unwilling to return to that country because of such fear." *Pilica,* 388 F.3d at 950 (citing Mikhailevitch, 146 F.3d at 389, and 8 C.F.R. § 208. 13 (b)(2)(i)).

In addition to requesting asylum, the Metos appeal the IJ's decision denying them withholding of removal pursuant to INA § 241(b)(3). An applicant seeking withholding of removal faces a more stringent burden than what is required on a claim for asylum. Mikhailevitch, 146 F.3d at 391 (citing Cardoza-Fonseca, 480 U.S. at 431-32). In order to be entitled to relief, an alien must establish that there is a clear probability that he will be subject to persecution if forced to return to the country of removal. INS v. Stevie, 467 U.S. 407,413 (1984).

Although the Metos applied for relief under the CAT, they do not appeal the IJ's decision denying them relief on that ground.

When the BIA summarily upholds the IJ's decision, as occurred here, we review the IJ's decision directly. *Denko v. I.N.S.*, 351 F.3d 717, 723 (6th Cir. 2003). We must uphold the IJ's factual findings if those findings are supported by "reasonable, substantial, and probative evidence on the record considered as a whole." *I.N.S. v. Elias-Zacarias*, 502 US. 478,481 (1992) (quoting 8 US.C. § 1105a(a)(4)). We have clarified that an IJ's factual findings are "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." *Yu v. Ashcroft*, 364 F.3d 700, 702 (6th Cir. 2004) (quoting 8 US.C. § 1252(b)(4)(B)). We review the I]'s legal conclusions *de novo. Tapucu v. Gonzales*, 399 F.3d 736, 738 (6th Cir. 2005).

B. Factual Findings

The Metos argue that the IJ's decision was not supported by substantial evidence, and that the record compels factual findings contrary to those made by the IJ. The IJ made several findings of fact, which are "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." *Yu*, 364 F.3d at 702. The IJ found that although Qemal was arrested in 1991, any physical harm he suffered was minuscule, as evidenced by the fact that he

declined to mention the harm in his asylum application, and because his testimony as to his treatment by the police was internally inconsistent. Next, the IJ found that although Qemal had been beaten by someone in 1997, he declined to find that Qemal had been arrested or to make a finding as to the abuser's identity, because Qemal's initial account during his testimony of the event describes a beating but makes no mention of police officers or detention. The IJ found that there had been no attempt to kidnap Gerta, based on her clear testimony that there was never any such attempt. The IJ declined to find that Qemal had been arrested in 2000, because Qemal failed to offer any corroborating evidence. Finally, the IJ concluded that the Metos had not met their burden of proving that a bomb had been planted outside their home for political reasons. The IJ noted that although the pictures of the home indicated that there were some cracks in the house, there was no corroboration that the pictured house was in fact the home in which the Metos lived, and there was no corroboration that the cracks were caused by an explosion.

The record does not compel findings of fact contrary to those found by the IJ. The IJ declined to make those findings urged by the Metos only when presented with

conflicting testimony, or when there was a complete lack of corroboration. The IJ found that, based on his determination that Qemal had lied about an attempt to kidnap Gerta, Qemal's testimony was not fully credible. We review an IJ's credibility determination for clear error. Tran v. Gonzales, 447 F.3d 937, 943 (6th Cir. 2006) (citing 8 C.F.R. § 1003. 1 (d)(3)(I)). Given Gerta's conflicting testimony, the IJ's credibility determination was not clearly erroneous. Furthermore, the IJ did not err in discounting other portions of Qemal's testimony because Qemal's unsupported testimony about the kidnapping attempt went to the heart of the Metos' claim that they were persecuted. *See Sylla v. I.N.S.*, 388 F.3d 924, 926 (6th Cir. 2004) ("An adverse credibility finding must be based on issues that go to the heart of the applicant's claim.").

Given the IJ's finding that Qemal's testimony was not fully credible, the IJ did not err in requiring that the Metos present corroborating evidence. "Where the alien's testimony could be viewed as incredible, inconsistent, or incoherent, a fact-finder may reasonably conclude, absent corroboration, that the testimony is insufficient to meet the standard of proof required." *Sacko v. Gonzales*, 434 F.3d 857, 862 (6th Cir.

2006) (citing Pilica, 388 F.3d at 954). Furthermore, given that Adriana sought asylum under the same application as Qemal, it was not unreasonable for the IJ to expect Qemal' s account to be corroborated by Adriana's testimony. "[W]here it is reasonable to expect corroborating evidence ... [t]he absence of such corroborating evidence can lead to a finding that an applicant has failed to meet her burden of proof. " *Dorosh v. Ashcroft*, 398 F.3d 379, 382 (6th Cir. 2004).

Based on the conflicting testimony regarding an attempt to kidnap Gerta and the lack of corroborating evidence, the IJ's factual findings are supported by reasonable, substantial and probative evidence.

C. Persecution

Finally, the Metos argue that the IJ erred by failing to analyze past and future persecution as distinct elements. In this case, the IJ found that the Metos had not demonstrated that they had suffered any past persecution, even crediting all of Qemal' s testimony, and that the Metos were not entitled to a presumption of a reasonable fear of future persecution. The IJ then found that, based on the Country Report noting the decline of anarchy in Albania, the Metos had similarly failed to demonstrate a well-founded fear of future persecution.

As to past persecution, the IJ concluded that the Metos had not proven that Qemal was arrested in 1997 or 2000, that there was an attempted kidnapping of Gerta, or that a bomb exploded in 2000. These findings of fact are sufficiently supported by the record; hence, we are not compelled to dismiss them. Although we have held that interrogation can cross the line from harassment to persecution, *Gilajv. Gonzales*, 408 F.3d275, 285 (6th Cir. 2005), Qemal's testimony - stating that the police asked him "what are you trying to do getting involved in the democratic party, what are you getting out of this" - does not compel us to conclude that the conduct in this case crossed that line. Given Qemal's testimony, and the fact that the alleged incident took place more than fifteen years ago, we will not disturb IJ's conclusion that this incident does not constitute past persecution sufficient to create a presumption of a well-founded fear of future persecution. *See Rreshpja v. Gonzales*, 420 F.3d 551, 556 (6th Cir. 2005) (holding that an isolated instance of persecution was insufficient to establish persecution).

As to a well-founded fear of future persecution, the IJ relied on the 2001 Country Report, which notes that "in

today' s atmosphere it is highly unlikely that many applicants will have credible claims to political persecution." The report further indicates that "the government has neither the means nor the will to carry out systemic persecution." Based on the IJ's findings offact, which are supported by substantial evidence, the IJ's conclusion that the Metos did not have a well-founded fear of future persecution was not in error. The Metos have not demonstrated that "there is a 'reasonable possibility' that [they] would be targeted for persecution upon [their] return." *Pilica*, 388 F.3d at 955 (citing*Mikhailevitch*, 146 F.3d at 389).[1]

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[1]The Metos additionally argue that the BIA erred in adopting the decision of the IJ by way of a single member order, which the BIA may do if the issues on appeal are "squarely controlled by existing Board or federal court precedent and do not involve the application of precedent to a novel factual situation," or, if the "factual and legal issues raised on appeal are not so substantial that the case warrants the issuance of a written opinion." 8 C.F.R. § 1003(1)(e)(4)(I). Whether the BIA's decision to streamline a particular case may be reviewed by this Court remains an open question in this circuit, *Rreshpja*, 420 F.3d at 558. Because none of the issues raised on appeal are novel or so substantial as to require an opinion by the BIA, we need not decide whether the BIA's decision to implement its streamlined procedures in a given case is reviewable.

III.

For the foregoing reasons, we **AFFIRM** the decision of the IJ, as adopted by the BIA.

APPENDIX C

BOARD OF IMMIGRATIONS APPEALS

DECISION OF THE BOARD OF IMMIGRATION APPEALS FILED JANUARY 11, 2005

C-1 through C-2

U.S. Department of Justice
Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

Kulics, Richard A., Esquire
975 East Maple Road, Suite 210
Birmingham, MI 48009-0000

Office of the District Counsel/DE
333 Mt. Elliott St., Rm. 204
Detroit, MI 48207

Name: METO, QEMAL A79-569-698
RIDERS: 79-69-699

Date of this notice:
01/11/2005

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

/s/ Frank Krider
Frank Krider
Chief Clerk

Enclosure
Panel Members:
MOSCATO, ANTHONY C.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board
Immigration Appeals

Falls Church, Virginia 22041

File: A79-569-698 - Detroit Date: Jan. 11, 2005

In re: METO, QEMAL

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:
Kulics, Richard A. Esquire

ON BEHALF OF DHS:
Catherine M. Pincheck, Assitant Chief Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

/s/ Anthony C. Moscato
FOR THE BOARD

APPENDIX D

ORAL DECISION AND ORDERS
OF IMMIGRATION JUDGE
FILED OCTOBER 1, 2003

D-1 through D-35

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Detroit, Michigan

File No.: A 79 569 698/699 October 1, 2003

In the Matter of)
) IN REMOVAL PROCEEDINGS
QEMAL METO and)
ADRIANA METO)
Respondents)

CHARGE: Section 237 (a) (1) (A) of the Immigration and Nationality Act, as amended. At time of entry or adjustment of status, within one or more classes of aliens inadmissible by law existing at that time to an alien immigrant who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other-valid entry document required by the INA or who is not in possession of a valid unexpired passport or other suitable travel document or identity and nationality document, if such document is required by regulations promulgated by the Attorney General pursuant to Section 212 (a) (7) (A) (i) (I) of the INA.

APPLICATIONS: Asylum and withholding of removal.

ON BEHALF OF RESPONDENT:
Richard A. Kulics

ON BEHALF OF DHS:
Thomas O. Martin

ORAL DECISION AND ORDERS OF THE IMMIGRATION JUDGE

Background

The lead respondent is a 60-year-old male, native and citizen of Albania. The remaining respondent is his 54-year-old wife. They both were admitted to the United States in New York, New York on or about October 29, 2000, without proper documentation.

The Immigration and Naturalization Service, hereinafter the Service, has commenced removal proceedings against both and are charging them with being removable pursuant to the above mentioned section of the Immigration and Nationality Act, hereinafter Act or INA.

Of course, since the institution of these proceedings the Immigration Service has been reconstituted as part of the Department of Homeland Security.

The respondents, through counsel, admitted the factual averments contained in their respective Notices to Appear, which have been denominated as Exhibits 1 and 1A. Exhibits 1 and 1A were both served on October 26, 2001. Based upon the concessions to the allegations in the Notice to Appear as well as the admission to their removability pursuant to the charge, each one of their removability has been established by clear and convincing evidence. As they declined to designate a country of removal, Albania has been directed pursuant to Section 241(b) of the INA, should such action become necessary.

The lead respondent filed an administrative asylum application with the Immigration Service and referred to this Court for adjudication, it is found at Exhibit 2. Exhibit 2 reflects that respondent, initially, attempted to file this application on or about July 7, 2001 but was, ultimately, successful on or about August 20, 2001.

At the commencement of today's merits hearing, as well as at the last Master Calendar, it was brought to the attention of the Court that three changes were made at the asylum interview in Chicago. One, on the front page, his religion was left blank and they inserted the word Muslim.

Next, at the type of entry, on the first page of the application, they inserted instead of EWI, the initials NVDI. And, lastly, on page two as to respect to his parents there was an annotation that his parents were deceased.

At the commencement of today's merits hearing the respondent was fully apprised of the consequences of knowingly filing a frivolous application for asylum and after he had assured the Court that he had gone over the application line by line and word for word, with an interpreter that he believed to be competent, the respondent signed the application without making any other, changes . Accordingly, before this Court, the respondent is filing for asylum pursuant to Section 208 of the Act; secondly, withholding pursuant to Section 241 (b) (3) of the INA; and, lastly, withholding pursuant to the United Nations Convention against Torture and Other Forms of Cruel, Inhuman, or degrading Treatment or Punishment, hereinafter Torture Convention, pursuant to 8 C.F.R. 1208.16.

Of course, as the respondents were both served with a copy of their Notice to Appear within one year of their arrival in the United States, they are not statutorily eligible for the privilege of voluntarily departing the United States at the

conclusion of these proceedings in lieu of an order of removal. This would be pursuant to Section 240B(b) of the INA. This is why they did not apply for that and this is why they do not attempt to lay the statutory prerequisites on the record.

The respondent's claims.

The respondent's claims for asylum and withholding pursuant to the statute, as well as the Treaty, are identical. They, basically, say that respondent claims that he was an activist in the Democratic Party beginning at about 1990. He became more involved as time went on. He joined the Democratic Party, ultimately, and he became a minor official in the Democratic Part for several years. During the course of his democratic involvement, the Court notes that he claimed that, he had .been called names, he had been threatened, he had been arrested and beaten on, at least, three occasions, 1991, 1997, and the year 2000. He also explained that in 2000 there was an explosion outside of his house so he jumped to the conclusion that it was caused by his political enemies and he also claimed that there was an attempted kidnapping on his daughter, prudently, for political reasons.

The respondent then tells us he came to the United States in October 2000. He fears he would be persecuted and tortured if he were to return to today's Albania .

The Court, parenthetically, observed, of course, that the application he has proffered includes not only himself but his wife, as a wife of an applicant who has been granted asylum she may, if not otherwise, eligibly be granted same status as the principle alien. Inasmuch as most of his application focuses upon what happened to the respondent this decision will, primarily, focus on him with references to other family members where necessary and appropriate.

Asylum and withholding of removal evidentiary standards

An applicant for asylum or withholding of removal bears the evidentiary burdens of proof and persuasion. Matter of Acosta, 19 I&N Dec. 211 (BIA 1985), modified Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987).

An applicant for asylum must. demonstrate he is a refugee within the meaning of Section 101(a) (42) of the INA, which requires him to show that he is unwilling or unable to return to his country of nationality because of past persecution coupled either a showing of the likelihood of present or future persecution or for humanitarian reasons as a matter of

discretion or because he has a well-founded fear of future persecution on account of his race, religion, nationality, membership in a particular social group, or political opinion. This requires that respondent establish that his fear is both subjectively genuine and objectively reasonable though credible, direct, and specific evidence which demonstrates that he possesses a belief or a characteristic a persecutor seeks to overcome in others by means of punishment of some sort, the persecutor is aware or becomes aware that he possesses this belief or this characteristic, the persecutor has the capability of punishing him and the persecutor has the inclination to do so. Matter of Mogharrabi, supra. See also, 8 C. F. R. 1208.13.

An applicant for withholding of removal under the statute must demonstrate a clear probability of persecution on account of a statutorily enumerated ground. INS v. Stevic, 467 U.S. 407 (1984). In Stevic the Court held that this clear probability standard required a showing that it is more likely than not that he would be subject to persecution. See also 8 C.F.R. 1208.16.

Next, in INS v. Cardoza-Fonseca, 480 U.S. 421 (1987) the Court has also held that the terms well-founded fear and

clear probability are, significantly different and the burden of proof required to establish eligibility for asylum is lower than that required for withholding of removal.

Pursuant to the powers delegated to him by Congress, the Attorney General has promulgated a regulation with respect to those seeking asylum. It is codified at 8 C.F.R.,1208.13. It provides, in part, that if the respondent has established that he had suffered past persecution it shall also be presumed that he has a well-founded fear of future persecution on the basis of his original claim. This, however, is a rebuttable resumption. It may be rebutted by the Government demonstrating one of two facets. First, that there has been a fundamental change in circumstance such that the applicant no longer would have a well-founded fear of persecution in the applicant's country of nationality on account of one or more of the five statutorily enumerated grounds or the applicant could avoid future persecution by locating to a part of the country where under all those circumstances would be reasonable and expect that the respondent could so do. Now, this, of course, is a rebuttable presumption and maybe rebutted by the Government

demonstrating one of these two facets by a preponderance of the evidence.

With respect to these regulatory provisions the Court has the following observations and findings. With respect to the arrest in 1991, the Court notes that the respondent has demonstrated that he was arrested in 1991 and he did suffer some harm. This is established through the testimony of his daughter, as well as the testimony of himself. However, this was a minuscule harm as he did not even find it necessary to put this in his asylum application and during the course of his testimony he waffled about whether or not he had been beaten on that occasion. Next, the Court notes the respondent claimed that he was arrested in 1997 and held for 24 hours. This came through his daughter's testimony as well as his own testimony. However, when discussing this in his own testimony he, originally, said he was beaten by some masked men and left unconscious and only later got around to saying that he was, actually, arrested on this occasion. The Court does not believe that he has demonstrated that he was arrested on this occasion but did demonstrate that he had suffered some beating at the hands of someone. Who these people were the Court has no idea. But even assuming, arguendo, it

was done for political reasons this does not constitute past persecution, as did the 1991 incident, which does not rise to the level of past persecution. Next, the respondent claimed that there was an attempted kidnapping on his daughter. This is not mentioned in his application, which raises a red flag with respect to the verity of this particular incident. Now, the daughter got on the stand and said no, there was some fear that I might be kidnapped. One of my fellow students and one of my best friends was, in fact, kidnapped and put into prostitution in Italy, but there was no attempt to kidnap me. Obviously, the respondent was lying about this and this tarnishes other parts of his testimony, especially, those that result in him claiming why he came to the United States. Next, of course, he claimed that he was arrested in the year 2000. This is not corroborated by anybody's testimony but his own and given the fact that he lied about the kidnapping the Court has no reason to believe that arrest, either. That could have been easily corroborated through the testimony of his wife. Presumably, if he was not home for a day she would, certainly, have known that. Next, of course, he claimed that there was an explosion right outside of his house. He gave the Court a picture but the picture does not corroborate the fact

that the bomb went off. All that it corroborates is that after he came to the United States there was some cracks unto the house that he claimed that he lived in. He did not even show this picture to his daughter to corroborate the fact that this was the house that they were living in or show the picture to his wife, who was here, to corroborate that that is the house that they were living in. The wife could have easily corroborated explosions since it happened in the middle of the night. She did not testify about anything. Hence, the Court does not find that the bombing was proven either. But even if he demonstrated that the bombing happened or that there might have been an attempted kidnapping there is no demonstration that any of this was done for political reasons. Now, the respondent's story, taken on its face, does not demonstrate any past persecution. The Court does not believe it. But even if you believe everything, as the Court described them, it still does not rise to the level of past persecution. Hence, they are not entitled to a rebuttal presumption of future persecution. But if somehow some of this rises to the level of past persecution the Government has demonstrated there has been a fundamental change in circumstances so the

respondent would no longer have a well founded fear of future persecution, objectively or subjectively.

The Attorney General has indicated that there are other ways to demonstrate one has an objective and subjective fear of future persecution, that presumption is not the only way. Now, the Attorney General has provided, in the same regulation, that the Immigration Judge shall not require the respondent to demonstrate that he would be singled out individually for persecution if he establishes that there is a pattern of practice in Albania of persecution of a group of persons similarly situated to him on account of race, religion, nationality, membership in a particular social group, as he claims here, his political opinion and the application establishes his own inclusion in and identification with such a group of persons such that his fear of persecution upon return is reasonable. Again, the records of this case and the Government proffered evidence demonstrates that there is no group of persons that he might belong to that are subject to a pattern of practice of persecution.

The Attorney General has promulgated a similar and parallel regulation with respect to those seeking withholding pursuant to the statute. This regulation is codified at 8 C.F.R.

1208.16. It also provides that if respondent has demonstrated that he has suffered past persecution it shall be presumed that his life or freedom would be threatened upon his return to the country of Albania on the basis of his original claim. This, again, is a rebuttable presumption and may be rebutted by the Government demonstrating, by a preponderance of the evidence, the fact that there has been a fundamental change in circumstance such that the respondent's life or freedom would not be threatened on account of any of the five grounds mentioned or the applicant could avoid future threat to his freedom and life by locating to a part of the country where under all of the circumstance it would be reasonable to expect the respondent to so do . Of course, what the Court said with respect to the same regulation and the asylum regulation applies with equal force here and the Court is not going to repeat that. Nevertheless, the Attorney General has also said there are other ways to demonstrate it is more likely than not his life or freedom would be threatened upon his return. That is, it is more likely than not he would be persecuted if he were to return to Albania and in evaluating whether or not he has sustained, his burden. The Immigration Judge shall not require the applicant to provide evidence that he has been

signaled out, individually, for persecution if he establishes that in Albania there is a pattern or practice of persecution that a group of person similarly situated on account of race, religion, nationality, membership in a particular social group, or political opinion and he establishes his own inclusion in and identification with such group of persons such that it is more likely than not his life or freedom would be threatened upon his return to Albania. Again, he just has not demonstrated that .

As mentioned above, the respondent has also applied for withholding pursuant to the Torture Convention. An application for withholding pursuant to the Treaty bears the burden of demonstrating that it is more likely than not he would be tortured if removed to the proposed country of removal. In assessing whether or not he has sustained his burden the Court must consider all evidence relevant to the possibility of future torture including, but not limited to, such facts as evidence of past torture inflicted; evidence that he could locate to apart of Albania that he would not likely be tortured; evidence that gross, flagrant, or mass violations of human rights within Albania; and other relevant information about conditions in Albania. See generally 8 C.F.R. 1208.16.

Now, the Court notes, of course, that there is not a rebuttable presumption proviso with respect to Torture Convention claims as there are for asylum and withholding claims, as discussed above. In any event, the respondent has not demonstrated any reason why anybody would want to torture him or anyone associated with him if he were to return to today's Albania.

Credibility and corroboration.

In some instances an asylum seeker need not have corroborating evidence to prevail Mogharrabi supra. Nonetheless, the provision of corroborating evidence is not optional. The respondents must satisfy their affirmative duty to corroborate their claim to the degree that it can or otherwise, reasonably explain their failure to do so. See, for example, Matter of B-B-, Int. Dec. 3367 (BIA 1998), Matter of S-M-J-, 21 I&N Dec. 772 (BIA 1997, Matter of Dass, 20 I&N Dec. 120 (BIA 1989), see also Matter of M-D-, 21 I&N Dec. 1180 (BIA 1998). Plus, of course, the weaker the applicant's testimony the greater need of credible corroborative evidence. See, for example, Matter of Y-B-, 21 1&N Dec. 1136 (BIA 1998).

The rules on corroboration are the same for those seeking asylum, those requesting withholding under the statute, and those seeking withholding pursuant to the Treaty. Compare 8 C.F.R. 1208.13(a) with 8 C.F.R. 1208.16(b), and 8 C.FP.R. 1208.16(c) (2).

Now, with respect to his 1991 arrest and concomitant maltreatment he proffered the testimony of his daughter, who would have been a very young age, at that particular time. The Court notes, again, that this corroborates his claim but he does not mention IT in his application and the corroborating document offered by Mr. Alfred Olli, head of the Democratic Party in Cortia (phonetic sp.),does not mention this either. Accordingly, even if this did happen, and the Court believes it did, it was, certainly, minuscule and does not rise to the level of past persecution.

With respect to the 1997 incident, the Court has, again, observed that the respondent waffled about this in his testimony, does not mention it in his application, and, at best, his daughter corroborated he was gone all day, came back home with a broken or injured tooth and a black eye. Again, obviously, something happened to him, but what the Court is not prepared to make a finding. But, even if it was done for

political reasons, again, it does not rise to the level for past persecution.

With respect to the attempted kidnapping resulting in, basically, the daughter leaving to come to the United States and, ultimately, in a way for he and his wife to come to the United States, the Court finds that that did not happen. He was completely torpedoed, in this regard, by his daughter's testimony, who said that this did not happen and this tarnishes the resgestai of the rest of his claim.

Next, of course, the arrest in the year 2000. He has not proffered one iota of credible corroborative evidence with respect to that, not to mention any corroborative evidence. Again, Mr. Olli, in his statement, does not mention the 1997 or 2000 arrest. He does not mention any arrest at all, in fact.

And with respect to this bombing, there were no witnesses called to corroborate the claim and the picture is totally inconclusive, on this regard. And while the daughter did testify about the bombing the Court notes that she had long since left and come to the United States. She also knew of the 2000 arrest but was not prepared to even tell the Court what she had heard about it.

Evidence, discussions, and findings.

The Court is going to embark upon a discussion of the documents, the evidence of record, and intertwined from time to time comments about the testimony of the witnesses and then the Court will focus in on Exhibit No.2 and discussing respondent's claim and how it has changed over a period of time.

The Government has proffered three documents that were received, without objection, at Exhibit 4. Tab C, at Exhibit No. 4, is merely a confirmation that a document that respondent proffered to substantiate the fact that he came from a persecuted family in Albania was, in fact, a legitimate document.

Exhibit A, however, is the 2002 Country Reports which talks about Albania today, not Albania under the communist. It reflects that for the year of 2002, at the first page, there are no confirmed cases of political killings by the Government or its agents. Page two, there were no reports of politically motivated disappearances. Page four, there was no reports of political prisoners. Page eight, trafficking in women for the purposes of sexual exploitation remains a serious problem. See Exhibit 6F. Six F, reflects that, yes, a major transit route for trafficking women and girls runs right

through Albania. In fact, the daughter testified that one of her friends had been put into prostitution but even she could not say that this was due to political reasons. At best, it says here, at this report, that police were often involved directly and indirectly in trafficking but there is not substantiation that this is done for political reasons, it is done for monetary concerns and that is about it.

With respect to Tab B there is a May 2001 Country Profile, keep in mind, of course, that this was authored about seven months after respondent left Albania. In this report, at page three, it reflects that after the implosion of 1997, which the lead respondent even had to concede resulted in anarchy, Albania "has slowly and steadily resumed normalcy." Next, at page 4, it notes that in today's atmosphere it is highly unlikely that many applicants will have credible claims to political persecution. Next, page five, all political parties have been active in most of the country without a pattern of mistreatment even during the dark days of 1997. Now, this was even corroborated by the respondent in some extent by his testimony that there were over 50 political parties, they all tried to recruit each other's members into each other's parties and it was rather a cantankerous relationship. Next, at page

seven, "the government has neither the means or the will to carry out systemic persecution."

Now, the Court notes that respondent proffered a statement from Mr. Olli but Mr. Olli did not say anything about any problems that Mr. Olli has had. In fact, it did not say anything about the respondent's, problems, either. It did not talk about his house being blown up and it did not talk about the respondent being arrested, on any occasion.

Next, at Exhibit No. 5, is a picture, a black and white copy, of respondent's home. The Court has seen the original color photograph and there is nothing in this picture that demonstrates the fact that there was an explosion outside of his home. At best it is inconclusive. The bricks lying around are designed to hold down a plastic tarp that might be around a construction area, that is about it. There were some cracks in the walls but the Court has no idea of how these crack occurred or when this picture was taken. Now, the Court notes that this picture was taken after the respondent came to the United States and given the fact that he lied about the attempted kidnapping on his daughter the Court cannot jump to the conclusion that this was an explosion, let alone it was done for political reasons.

Next, at Exhibit No.3, we have several documents talking about past country conditions. This is nothing more than most matters that are reflected in the State Department's Report, already discussed. With respect to his only family composition, Tab A, is a family composition certificate which indicates that he got the birth date of his daughter a little bit off in his application. Next, there is a certificate from the Exploited and Persecuted Association. We already know that he submitted a legitimate document and he came from a politically persecuted family. Tab B is a birth certificate of Gerta, his daughter, again we know he got the date a little bit wrong in his application. But, with respect to his membership in the local democratic party he proffered a statement from Mr. Alfred Olli. This was written on February 6, 2001. Again, this would have been not quite five months after he left to come to the United States. Now, it does not mention anything at all about the respondent being arrested or any bomb going off near respondent's home. It just mentions that this respondent then participated in all political party activities organized by this particular democratic party. He was a member of the general commission as a representative of the democratic party in region four in Cortia City and from 1996

he has been a secretary to 1999 in region seven, where he has been distinguished for an excellent job with other members of the region. Note, until the respondent testified under oath about being the chairman or the head of this region seven there was no mention in his application of that being so. Apparently, his role in the democratic party and being a secretary was a minor one. As he said there were very few members in either region seven or eight and they even had to hold combined meetings to come up with enough people to have a meeting, apparently. The respondent, at best, for a period of time was a very, very minor official of the democratic party. Clearly, if Alfred Olli can continue to reside there without any difficulties why cannot the respondent.

Turning the Court's attention now to Exhibit No.2, the asylum application, previously mentioned. His claim is found at page four, part C, sub-part one. Now, part C, sub-part one does not say one thing about respondent ever been being arrested. In fact, when he was asked to list all of his arrests, part C, sub-part four of the next page, page five, he says he was not arrested, detained, or interrogated, at all. He said "my father was in prison during the communist era." So to the extent that he was ever arrested, obviously, it was a minuscule

matter that cannot possibly rise to the level of past persecution.

Turning the Court's attention, however, to box C-1, why are you seeking asylum? He says my family suffered under the communist regime, including imprisonment and inappropriation of possessions. Of course, then the whole country was communist so nobody had any private property. He talked about how his family was ostracized. He became a member of the democratic movement to help bring about the downfall of communism in Albania. Officially, I became a member of the party in 1993, during what we term the time of democracy, i.e. until the election of 1996. He said, I participated fully in the political life of my country and I was very active in the democratic party. During the election campaign of 1996 I was threatened by socialist party members to cease my democratic party activities or lose my life. After the communist, socialist, managed to cease to power after the 1997 elections I was threatened physically and psychologically. A great deal of pressure was brought to bear on me and on my family to pressure me to portrait myself as a disgruntled democratic party member who is disappointed at the democratic party. Notice no mention of arrests, no

mentions of beatings, and he never testified about how they tried to convince him that he was a disgruntled democratic party member, but he did testify that like all the other parties they tried to recruit him to be a member of the socialist party. He then continues by saying, he resisted the pressure which caused their efforts to become intensified. My 15-year-old daughter was used as a pawn. She was involved with a band which performed on Radio Cortia. I was told that if she did not denounce the democratic party she would not be allowed to participate in this band. Then began physical abuse and pressure. These threats occurred in many places on many occasions. Notice it did not say one thing about an attempted kidnapping of his daughter. It does not talk about an arrest. It does not talk about beatings. It talks about physical abuse and pressure but it does not go on to any incident. He then says these threats occurred in many places on many occasions. The people of the dark, as I call them, were sent by the socialist to put an explosive packet in my house. It turns out it was not in the house. Even if you believe his story it was outside the house in some sort of courtyard, that knocked down a wall and might have cracked the internal walls of his home. He then says I left the area and went to stay with relatives in

Tirana. He then came to the United States because he feared for his life, which if one were to read this and then when one would listen to his testimony one would think, probably, we are talking about two different people.

In any event, the respondent began his testimony by saying I was a shoemaker for 35 years, ending in 1994. I then went into private practice in making shoes and, in fact, worked out of my home until I left for the United States. He talked about how his family got all his property taken away and how his dad managed to be sentenced to nine years of incarceration but had amnesty after serving three years and was released in 1949, when he was about six years old, that is the respondent. He was then asked if he was involved in politics. He says yes after introduction of democracy. Notice the comparison to his application when he says he was a participant in and was one of the people that caused the downfall of the communist. He then said it started before 1990 but they got stronger in 1991, I attended meetings, I was a part of delegation and talked about the Democratic Party and tired to propagandize. He was asked, did this cause any problems for you? He said yes, Then he, eventually, got around to talking about July 1991. He was taken to the police

station, held for 12 years. Of course, this is not in his application. When he was asked whether he was beaten, notice he did not say yes or answer in the affirmative. He said, rather, I was "mistreated and psychological pressure" was. placed upon me. Later on, however, he began talking that this made him a stronger person. He mentioned, rather in a tangential way, that he was beaten, presumably, at this incident. At any event, the extent that he was beaten, if it did happen, it was so minuscule it cannot possibly arise to the level of past persecution .

The respondent then says that he became a democratic party member in 1993. He did not hold an office. Nobody did in 1997. I was a leader of a section. What zone? It was zone eight. When the Court asked him why, basically, this was inconsistent with his application, notice in his application he does not talk about this, but Mr. Olli did, he said it was number sever. See Exhibit 3, Tab D. Meaning, that there were not a whole lot of people in either eight or seven, we held joint meetings. We tried to get socialist to switch parties before 1997. He then says the socialist took power in 1997 and I was a leader of an election section in zone four in Cortia in the summer of 1997 elections. Even though, he claimed

later on that the democratic party had about 55% of the population in Cortia, the socialist won that zone. Perhaps, he believes it was due to some manipulation. In any event, a couple days after the election he says I was going home, I was on a dark street, near my home, and three people wearing masks started to hit me. They talked about this being for the Democratic Party and they started beating on me. They left me unconscious and, eventually, I made it to my home. He said I had a fracture under my eye and one broken tooth. Then he corrected it to say, no, I did not have a fracture, I got medical treatment at home, I just had, basically, a black eye. Of course, this is the incident that the daughter testified the injuries being a result of being incarcerated for 24 hours. He, apparently, told them that he had been arrested. But, notice, when he, originally, told the Court about this he did not say anything about these people being policemen or ending up in jail. About five minutes later, during the course of his testimony sometime, how he just referred to, on July 3rd of 1997, somehow ending up in a police station and not going into any discrete incident.

The Court has no idea what happened to him in 1997 He did get beat up, obviously, but he has not demonstrated

that it was for any reasons that might be protected by the asylum laws of this country.

He then said that his daughter was into singing and she got various offers from various groups. She had choired on Radio Cortia and talked about, basically, being threatened or words to that affect by a group of Eurosocialist (phonetic sp.) who wanted to know why her dad was involved in the democratic party arid they wanted her to join the socialist party. Now, on the other hand, she testified nobody tried to pressure her to join the socialist party.

In any event, he indicated that yes, he was afraid of the kidnapping and the kidnapping was rather endemic at this particular juncture in Albania's history, especially, in this area, apparently. In fact, he went further to say something that was not in his application, they tried to kidnap my daughter and because of the intervention of people we knew they left and the kidnaping was not successful. Of course, in his daughter's testimony she said there was no kidnapping attempt and there was not even anything close to it. Notice, in the application he, basically, said if she would not cooperate or if the dad would not quit the democratic party she would not be allowed to play in this band at the radio station, which

is a far cry from, they are going to kidnap her or they are going to do other bad things because of this.

In any event, he talks about in October 2000 there were other elections. He, again, conducted propaganda, there was bold manipulations, and the Democratic Party did not win. He also talked about how the commission members of something had come to him and tried to convince him to change the election results or do something, when he rebuffed their entry fees. He then said on October 8, 2000 he was coming out of his house and two police came and took him to a police station and held him for 24 hours, beat him, kicked him, shoved him, et cetera, et cetera, and held him in a humid cell, he was two hours in the isolation room, then they took him to a cell, and then he was released. Of course, he never proffered any corroborative evidence and we already know he lied about the kidnapping so, clearly, why should the Court believe this?

Then respondent was shown a picture of his house and he tried to show the Court how the cracks in his wall was the result of this explosion in October 2000. Again, he cannot corroborate this and the picture, at best, is neutral.

He then said he moved onto Tirana to live with his brother and he would, occasionally, go home, especially, at night. Ultimately, he left on October 28 and arrived in New York on October 29.

Curiously, he said, however, he never saw the paperwork that he and his wife used in traversing to the United States. He never said how he would have gotten into the United States without, actually, seeing or possessing any of his paperwork and he did not testify about coming with any group other than, perhaps, his wife.

On cross-examination, he said, yes, there are 52 parties in Albania who all do propaganda, they all tried to recruit other party members, and in 1997 there was anarchy, and the weapons that were taken from military depots and these weapons were present in society, even as I left. In fact, when I left and when my home was bombed, bombings of homes happened daily. Although, he jumps to the conclusion it must have been done for political reasons as he had no other enemies. Query, maybe he had some commercial enemies, if this even happened, as he operated his cobbler business out of his home .

Despite the fact that he claimed that he told the police about the bombing he claimed that they did not do anything. But how would he know, he left almost immediately and he claims they sort of just shoved it under the rug and did not worry about it, then he jumped to conclusions, as he did several times during the course of his testimony.

The next witness to testify is Gerta, his daughter, born on December 15, 1982. She identified these individuals, present in the courtroom as the respondents, as her parents, even though she had no documents to demonstrate who she was. She said that she played violin, piano, and sang. She talked about performing on Radio Cortia, how they tried to get the father to quit the membership in the Democratic Party, they did not try to recruit her, and that nobody tried to kidnap her, although, the family, allegedly, got letters and other threats at the home that said we will kidnap or kill you or members of your family if you do not leave the party. Of course, that is; again, something that he did not testify about. Query, why not?

She did testify, of course, that she knew about the explosion but other than the explosion nothing really happened personally to her. Well, obviously, this did not

personally happen to her either because she was not present in Albania at the time. Then she says, yes, I knew about one of my best friend's being kidnapped. Apparently, she was taken to Italy, was placed into prostitution, and she was able to call her mother from there and that is how she knows this, the witness, that her best friend was placed into prostitution in Italy, even though the woman never returned home. When asked whether or not that the father of this person was, in fact, a democratic party member she says yes, but I do not know if the mother was a member of the democratic party or a member of the socialist party or what party, really, or words of that affect. She also indicated, of course, there were serious concerns at that time about people being kidnapped and put into prostitution or even being kidnapped for ransom. But there is nothing in her testimony and nothing in the background evidence, in this case, that reflects that kidnapping is done for political reasons. She also testified about knowing that the father was arrested in 1991, when she was a young girl, how he was physically abused, and how he came home and said he had been arrested and she knew that he was gone for 24 hours. She knew about the third arrest,

again, but, of course, was not there to be able to tell the Court anything about it.

Conclusions.

For the reasons discussed above the Court finds that the respondent was arrested in 1991. He had some problems, certainly, and he had some difficulties but he, certainly, has not demonstrated he was arrested in 1997. He has not proven that he was arrested in 2000. He has not proven that the bomb went off in the year 2000. Certainly, he has not proven that there was any attempted kidnapping of his daughter and, quite frankly, he just testified falsely about this. The Court finds that the respondent has not demonstrated he has suffered any past persecution, hence, he is not entitled to any rebuttable assumption of future persecution. But even if you believe his story none of this rises to the level of past persecution because, at best, there is a supposition about the bombing and, at best, there is a supposition of the attempted kidnapping of these things. Of course, we know the attempted kidnapping never happened. In any event, even if you believe the respondent's story, to the extent one can believe it based upon the totality of the circumstances, none of this rises to the level of past persecution. Hence he is not entitled to any

presumptions of future persecution. But assuming, arguendo, that you can believe that somehow some of this rises to the level of past persecution the Country Reports reflect that the anarchy that was on its way down at the time he left Albania is no longer there and that Democratic Party members are no longer subject to a pattern of violence and persecution. Hence, he has not demonstrated that he has a well-founded fear of future persecution. He, certainly, has not demonstrated that it is more likely than not he would be persecuted and he has not demonstrated that anybody would really be interested in him if he were to return to Albania. Hence, he has not really demonstrated that anybody would more likely than not want to torture him. Accordingly, all of his applications will be denied because he has failed in his burden of proof. Accordingly, the Court will issue the following orders.

ORDER

IT IS HEREBY ORDERED the respondent's application for asylum, withholding of removal under the statute, and withholding of removal under the Torture Convention, as appropriates his wife, be denied.

IT IS FURTHER ORDERED that both of the respondents be removed from the United States to Albania on the charge contained in their respective Notice to Appear.

/s/ Robert D. Newberry
ROBERT D. NEWBERRY
Immigration Judge